

REMARKS

As an initial matter, the reliance on Edwin is non-statutory. The discussion of the reference is inappropriate, absent any reliance on it as a basis for rejection. Therefore, it should be withdrawn from any future actions. The Applicant declines to address uncited references and no rule or requirement would necessitate doing so.

Of course, the Examiner is free to withdraw the final rejection and cite any reference that the Examiner deems appropriate. Certainly, if the Examiner fails to cite the reference, it amounts to a recognition that the reference is of no merit.

Under the Examiner's rationale, the U.S. Patent system would revert to a subjective standard. All the Examiner has to do is cite a couple of references and suggest that what is done is obvious. To the contrary, the United States system requires an objective showing of obviousness. There must be some rationale within the art to make the combination. Here, there is no rationale.

One reason there is no rationale is because there is nothing that suggests to one of ordinary skill in the art any reason to make the cap itself infrared transmissive. Certainly, one skilled in the art could use the Ciambone reference to accomplish the results that Ciambone necessarily accomplishes. But nothing in Ciambone would suggest any reason to make the cap infrared transmissive.

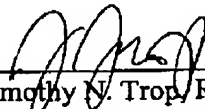
The suggestion that Ciambone teaches that he could be used for any purpose simply militates against the rejection. Since Ciambone broadly contends that his invention can be used for any purpose, and the Examiner obvious accepts this proposition, why would one skilled in the art do anything other than simply use Ciambone? If one did that, one would have no reason to use what is claimed. Nothing about Ciambone in and of itself teaches anything about why one would modify the cap. Ciambone teaches doing what Ciambone says, which is not modifying the cap. The other reference does not cure the deficiency.

Absent any teaching in the references of any rationale to modify the cap to make it infrared transmissive as opposed to simply using Ciambone's tool itself, there is no rationale to make the claimed invention.

Therefore, reconsideration is requested.

Respectfully submitted,

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Timothy N. Trop, Reg. No. 28,994
TROP, PRUNER & HU, P.C.
8554 Katy Freeway, Ste. 100
Houston, TX 77024
713/468-8880 [Phone]
713/468-8883 [Fax]

Attorneys for Intel Corporation